

6.6 Family and Medical Leave Act

An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 20 USC 2601, et seq., and the federal regulations implementing the Act, 29 CFR Part 825.

EMPLOYEE ELIGIBILITY:

To be eligible for FMLA benefits, an employee must:

1. have worked for Kentucky State Government for a total of at least 12 months; and
2. have worked or been on paid leave for at least 1,250 hours in the 12 months immediately preceding the first day of FML.

GUIDELINES AND PROCEDURES:

1. Family and medical leave shall be awarded on a calendar year basis.
2. An employee shall be entitled to a maximum of twelve (12) weeks of accumulated annual or sick leave, unpaid family and medical leave, or a combination thereof, for the birth, placement, or adoption of a child.
3. While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.
4. If the employee would qualify for family and medical leave, but has an annual, compensatory or sick leave balance, upon the employee's request, the agency shall permit:
 - (a) The employee to reserve ten (10) days of accumulated sick leave and be placed on FMLA leave; or
 - (b) The employee to use accrued paid leave concurrently with FMLA leave.

APPLICATION FOR FAMILY LEAVE

Employee Name _____

Social Security Number _____

Agency _____

Agency Address _____

Regular Hours worked Per Week _____

Home Address _____

Home Phone (_____) _____ Work Phone (_____) _____

Purpose of Family Leave _____

Attach REQUIRED supporting documentation.

Anticipated duration of leave from _____ to _____
for a total of _____ work days.

In requesting family leave, I certify that all information on this application is true and that I will abide by the regulations governing family leave.

Employee Signature

Date

FOR AGENCY USE ONLY:

Family Leave Approved _____ For Dates _____ to _____

Family Leave Denied _____

Family Leave Balance as of this date _____

Family Leave Designation Letter sent _____

Date

SIGNATURE OF APPOINTING AUTHORITY
OR DESIGNEE

DATE

CERTIFICATION OF HEALTH CARE PROVIDER
(Family and Medical Leave Act of 1993)

1. Employee's Name: _____
2. Patient's Name (if different from employee): _____
3. The attached sheet describes what is meant by a "serious health condition" under the Family and Medical Leave Act. Does the patient's condition¹ qualify under any of the categories described? If so, please check the applicable category.

(1)___ (2)___ (3)___ (4)___ (5)___ (6)___, or None of the above_____

4. Describe the medical facts which support our certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:

- 5.a. State the approximate date the condition commenced, and the probable duration of the condition (and also the probable duration of the patient's present incapacity² if different): _____

- b. Will it be necessary for the employee to take work only intermittently or to work on a less than full schedule as a result of the condition (including for treatment described in Item 6 below)? _____

If yes, give the probable duration: _____

- c. If the condition is a chronic condition (condition #4) or pregnancy, state whether the patient is presently incapacitated² and the likely duration and frequency of episodes of incapacity²: _____

- 6.a. If additional treatments will be required for the condition, provide an estimate of the probable number of such treatments: _____

If the patient will be absent from work or other daily activities because of treatment on an intermittent or part-time basis, also provide an estimate of the probable number of interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any: _____

- b. If any of these treatments will be provided by another provider of health services (e.g. physical therapist), please state the nature of the treatments: _____

¹ Here and elsewhere on this form, the information sought relates **only** to the condition for which the employee is taking FMLA leave.

² "**Incapacity**," for purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom.

- c. If a regimen of continuing treatment by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):

- 7.a. If medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), is the employee unable to perform work of any kind?_____
- b. If able to perform some work, is the employee unable to perform any one or more of the essential functions of the employee's job (the employee or the employer should supply you with information about the essential job functions)?_____ If yes, please list the essential functions the employee is unable to perform: _____

- c. If neither a. nor b. applies, is it necessary for the employee to be absent from work for treatment?_____
- 8.a. If leave is required to care for a family member of the employee with a serious health condition, does the patient require assistance for basic medical or personal needs or safety, or for transportation?_____
- b. If no, would the employee's presence to provide psychological comfort be beneficial to the patient or assist in the patient's recovery?_____
- c. If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration of this need:

(Signature of Health Care Provider)

(Date)

(Type of Practice)

(Address)

(Telephone Number)

THIS FORM WILL BE MAINTAINED IN A CONFIDENTIAL FILE SEPARATE FROM THE EMPLOYEE'S PERSONNEL FILE.

To be completed by the employee needing family leave to care for a family member:

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or it will be necessary for you to work less than a full schedule:

(Employee Signature)

(Date)

ATTACHMENT

A "**Serious Health Condition**" means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care

Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity² or subsequent treatment in connection with or consequent to such inpatient care.

2. Absence Plus Treatment

(a) A period of incapacity² of more than three consecutive calendar days (including any subsequent treatment or period of incapacity² relating to the same condition), that also involves:

(1) **Treatment**³ two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion which results in a **regimen of continuing treatment**⁴ under the supervision of the health care provider.

3. Pregnancy

Any period of incapacity due to pregnancy, or for prenatal care.

4. Chronic Conditions Requiring Treatments

A chronic condition which:

(1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity² (e.g., asthma, diabetes, epilepsy, etc.).

5. Permanent/Long-term Conditions Requiring Supervision

A period of incapacity² which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

³**Treatment** includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

⁴**A regimen of continuing treatment** includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

ATTACHMENT

Page 2

6. Multiple Treatments (Non-Chronic Conditions)

Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity² of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

**TO BE PUT ON AGENCY LETTERHEAD
(LETTER FOR DESIGNATION OF FMLA)**

(DATE)

TO: _____
(Employee's name)

FROM: _____
(Name of appropriate employer representative)

SUBJECT: Family/Medical Leave

On _____, you notified us of your need to take leave due to:

- ☐ The birth of your child, or the placement of a child with you for adoption or foster care; or
- ☐ A serious health condition that makes you unable to perform the essential functions of your job; or
- ☐ A serious health condition affecting your spouse, child, or parent, for which you are needed to provide care

You notified us that you need this leave beginning _____ and that you expect leave to continue until on or about _____.

Except as explained below, upon exhaustion of your present leave balances and qualification of the mandated criteria, you have a right under the Family and Medical Leave Act (FMLA) for up to 12 weeks of unpaid leave in a 12-month period for the reasons listed above. Also, your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work, and you must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from leave. If you do not return to work following FMLA leave for a reason other than (1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; or (2) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.

This is to inform you that:

1. You will ____ will not ____ be required to furnish medical certification of a serious health condition. If required, you must furnish certification by _____, (must be at least 15 days after you are notified of this requirement) or we may delay the commencement of your leave until the certification is submitted.
2. You will ____ will not ____ be required to present a fitness-for-duty certificate prior to being restored to employment. If such certification is required but not received, your return to work may be delayed until the certification is provided.

Under the terms of 101 KAR 2:102 Section 3 (6) (b), employees may request to reserve ten (10) days of accumulated sick leave before being placed on unpaid FMLA leave. If you wish to reserve up to ten (10) days of your accumulated sick leave, you must notify this office in writing before being placed on unpaid leave.

If it becomes necessary for you to take leave beyond the date of your paid leave balances, excluding the ten reserved sick days, this letter will be followed up with further instructions regarding procedures for placement on Family and Medical Leave.

QUESTIONS ABOUT FAMILY LEAVE

When on Family Leave without pay, does an employee's increment date change?

While there is no personnel action for Family Leave, it is considered the same as regular leave without pay (except for the fact that the state pays the state share of life and health insurance). Therefore, if an employee is off on Family Leave without pay for sufficient time to change the increment date if the employee were off on regular leave without pay, the increment date would change.

Does an employee on family leave without pay accrue leave and/or service credit?

While there is no personnel action for Family Leave, it is considered the same as regular leave without pay (except for the fact that the state pays the state share of life and health insurance). Therefore, an employee on Family Leave without pay does not accrue leave or service credit during this leave.

How does Family Leave apply to an employee who is receiving workers' compensation?

An employee who is receiving workers' compensation and has exhausted all paid leave may use up to his/her balance of Family Leave on a day for day basis in order to maintain the state share of health and life insurance.

When an employee is on leave without pay by a personnel action, is that employee eligible for Family Leave?

An employee who has been placed on leave without pay by a personnel action (including workers' comp recipients) is not eligible for Family Leave unless a personnel action removes him/her from unpaid status and all other criteria are met.

Is an employer required to allow intermittent leave for caring for a newborn child?

An employer may, but is not required to, approve intermittent leave for the purposes of caring for a newborn or a newly placed foster or adopted child. This does not affect the fact that an employee is entitled to work a reduced schedule (or to take intermittent leave) due to a qualifying illness or injury or when it is necessary to care for an ill family member (as defined in the FMLA).

Are employees eligible for holiday pay when on Family Leave?

Yes, an employee on Family Leave is eligible to be paid for any holidays which occur during the Family Leave. The holidays are to be counted as part of the twelve (12) weeks for which the employee is eligible.

Will paid leave hours substitute for hours worked in meeting the 1250 hours needed to qualify for Family Leave?

Yes, the employee must have worked, or been on paid leave.

What 12 months is considered when determining the 1250 hours in the preceding calendar year?

To be eligible for Family Leave, the employee must have worked or been on paid leave 1250 hours in the 12 months preceding the first day of FMLA leave.

An employee has been on Family Leave Without Pay and is unable to return to work at the end of his 12-week eligibility. When the Personnel Action (P-1) is initiated, what effective date should be used for the official leave without pay?

Due to the Federal requirements in the Family and Medical Leave Act prohibiting the reduction of benefits, the effective date of the personnel action should be the day after the Family Leave ends.

Can leave be designated as FMLA leave after the leave is used?

In order to deduct leave from an employee's twelve weeks of eligibility, the employee or employer must designate leave as FMLA when the employee applies for that leave or when the employer determines that the leave qualified for FMLA, if this happens later. The employer's designation must be made before the leave starts, or before an extension of the leave is granted, unless the employer does not have sufficient information as to the employee's reason for taking the leave until after the leave began. In no event may an employer designate leave as FMLA leave after the leave has ended unless the employee requests it within two business days of returning to work.

The following situation occurs in your agency. What would you do? An employee has been off for a FMLA-qualifying event since May 17. It is now July 1 and no one has designated this past six weeks as Family Medical Leave (FML). She informs her supervisor that she will be unable to return to work for a few more weeks. At that point FML is discussed, but upon checking the employee's eligibility it is discovered that she has not worked 1250 hours in the 12 months immediately preceding July 1. If the FML had been designated on May 17, the employee would have met the eligibility criteria (she did work 1250 hours in the 12 months immediately preceding May 17).

According to recent case law on this issue, provided that the employee is not prejudiced or penalized by your agency's failure to designate the leave already taken as FMLA leave, you may designate this leave retroactively as FMLA qualified leave and the employee would be permitted to take a total of 12 weeks of FMLA leave following May 17.